

CORPORATION, SECURITIES AND LAND DEVELOPMENT BUREAU

RELEASE NO. 97-5-S

TO: ALL INTERESTED PARTIES

SUBJECT: Impact of Section 18(b)(4)(A) of the National Securities Markets Improvement Act of 1996 upon Section 402(b)(17) of the Michigan Uniform Securities Act

General Background:

Questions have been raised concerning the impact of the National Securities Markets Improvement Act of 1996 ("NSMIA") that was signed into law on October 11, 1996. This Release will be limited to the impact of Section 18(b)(4)(A) of NSMIA upon Section 402(b)(17) of the Michigan Uniform Securities Act, 1964 PA 265, as amended (the "Michigan Act").

Section 18(b)(4)(A) of NSMIA provides an exemption for securities that are exempt pursuant to Section 4(1) or 4(3) of the Securities Act of 1933, as amended (the "33 Act"), if the issuer "files a report with the [SEC] pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 [34 Act]." (Note that this Release will deal only with Section 4(1) of the 33 Act).

Section 4(1) of the 33 Act provides an exemption for "transactions by any person other than an issuer, underwriter, or dealer."

Section 402(b)(17) of the Michigan Act provides an exemption for "any nonissuer transaction effected by or through a broker-dealer and any outstanding security of the same class as that which has been designated by order of the administrator as eligible for trading in this state. A person requesting a designation order shall pay a filing fee of \$100.00."

Action or Interpretation:

Michigan has been preempted by Section 18(b)(4)(A) of the 33 Act from imposing limitations on secondary market transactions (by a person other than an issuer, underwriter, or dealer) where the issuer files reports with the SEC pursuant to Section 13 or 15(d) of the 34 Act. Consequently, the Bureau cannot impose limitations upon persons seeking a Designation Order pursuant to Section 402(b)(17) of the Michigan Act. Therefore, if an issuer is filing 34 Act reports pursuant to Section 13 or 15(d) of the 34 Act, such issuer is exempt from secondary trading qualifications pursuant to Section 402(b)(17) of the Michigan Act. The Bureau can no longer condition the granting of said exemption upon the issuer meeting certain qualifications.

Section 18(c)(2) of NSMIA permits States to continue to require the filing of "any document" filed with the SEC, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located within the State, solely for notice purposes and for the assessment of any fee, together with a consent to service of process and any required fee. Consequently, the \$100.00 fee imposed by Section 402(b)(17) of the Michigan Act, a consent to service of process and notification is still required.

Authority: National Securities Markets Improvement Act of 1996

Signed by Craig B. Newell, Acting Director
Corporation, Securities and Land Development Bureau

Dated: April 22, 1997